

AMENDED IN SENATE JUNE 3, 2014  
AMENDED IN ASSEMBLY MAY 29, 2013  
AMENDED IN ASSEMBLY APRIL 29, 2013  
AMENDED IN ASSEMBLY MARCH 12, 2013  
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## ASSEMBLY BILL

**No. 913**

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**Introduced by Assembly Member Chau**

February 22, 2013

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An act to add Section 47604.1 to the Education Code, ~~and to amend Section 1091 of the Government Code~~, relating to charter schools.

### LEGISLATIVE COUNSEL'S DIGEST

AB 913, as amended, Chau. Charter schools.

(1) The Ralph M. Brown Act requires that all meetings of a legislative body, as defined, of a local agency be open and public and all persons be permitted to attend unless a closed session is authorized. The Bagley-Keene Open Meeting Act requires, with specified exceptions, that all meetings of a state body be open and public and all persons be permitted to attend.

This bill would expressly state that a charter school is subject to the Ralph M. Brown Act, unless it is operated by an entity governed by the Bagley-Keene Open Meeting Act, in which case the charter school would be subject to the Bagley-Keene Open Meeting Act.

(2) The California Public Records Act requires state and local agencies to make their records available for public inspection and to make copies available upon request and payment of a fee unless the records are exempt from disclosure.

This bill would expressly state that a charter school is subject to the California Public Records Act.

(3) Existing law prohibits certain public officials, including, but not limited to, ~~members of governing boards of school districts and citizens' oversight committees, from engaging in specified activities that are inconsistent or incompatible with, or inimical to, their duties as public officials, including, but not limited to, entering into a contract in which the official or the official's family member has a financial interest, as specified state, county, or district officers or employees, from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members, except as provided.~~

This bill would expressly state that a charter school is subject to these provisions.

(4) The Political Reform Act of 1974 requires every state agency and local governmental agency to adopt a conflict-of-interest code, formulated at the most decentralized level possible, that requires designated employees of the agency to file statements of economic interest disclosing any investments, business positions, interests in real property, or sources of income that may foreseeably be affected materially by any governmental decision made or participated in by the designated employee by virtue of his or her position.

This bill would expressly state that a charter school is subject to the Political Reform Act of 1974.

(5) This bill would state various exceptions and clarifications regarding the applicability of the acts described above in paragraphs (1) to (4), ~~inclusive.~~ *inclusive, including, among others, that an employee of a charter school is not disqualified from serving as a member of the governing body of the charter school because of that employment status.*

(6) ~~Existing law requires a member of the governing board of a school district to abstain from voting on personnel matters that uniquely affect a relative of the member.~~

~~This bill would provide that an employee of a charter school is not disqualified from serving as a member of the governing body of the charter school because of that employment status. The bill would require a member of the governing body of a charter school to abstain from voting on, or influencing or attempting to influence another member of that body regarding, any matter affecting his or her own employment or any personnel matter that uniquely affects a relative of the member.~~

~~The bill would provide that a person who provides a loan to a charter school due to a school fiscal emergency, or who signs a guarantor agreement relative to the lease of real property to be occupied by a charter school, is not disqualified because of that loan or guarantor agreement from also serving as a member of the governing body of the charter school or being an employee of the charter school and would require that person to abstain from voting on, or influencing or attempting to influence another member of that body regarding, all matters affecting the loan agreement or the real property lease agreement, as applicable.~~

(7)

(6) This bill would make these provisions operative on July 1, 2014 2015.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. It is the intent of the Legislature in enacting this  
2 act to do all of the following:  
3 (a) Establish conflict-of-interest policies for the governing body  
4 of charter schools that mirror existing conflict-of-interest policies  
5 followed by the governing board of school districts.  
6 (b) Provide transparency in the operations of the many charter  
7 schools that are providing quality educational options for parents  
8 and pupils and renew the faith of parents and the community that  
9 their local charter school is acting in the best interests of pupils.  
10 (c) Continue to provide greater autonomy to charter schools  
11 than traditional public schools and provide greater transparency  
12 to parents and the public with regard to the use of public funds by  
13 the governing body of charter schools for the educational benefit  
14 of their pupils.  
15 (d) Establish standards and procedures consistent with the  
16 Charter Schools Act of 1992 to avoid conflicts of interest in charter  
17 schools.  
18 SEC. 2. Section 47604.1 is added to the Education Code, to  
19 read:  
20 47604.1. (a) A charter school is subject to all of the following:  
21 (1) The Ralph M. Brown Act (Chapter 9 (commencing with  
22 Section 54950) of Part 1 of Division 2 of Title 5 of the Government

Code), except that a charter school operated by an entity governed by the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code) is subject to the Bagley-Keene Open Meeting Act regardless of the authorizing entity.

(2) The California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.

(4) The Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code). For purposes of Section 87300 of the Government Code, a charter school shall be considered an agency.

(b) ~~(4)~~ Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, an employee of a charter school is not disqualified because of that employment status from also serving as a member of the governing body of the charter school. A member of the governing body of a charter school shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters uniquely affecting his or her own employment.

~~(2) Notwithstanding Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, a person who provides a loan to a charter school due to a school fiscal emergency is not disqualified, because of that loan agreement, from also serving as a member of the governing body of the charter school or from being an employee of the charter school. A member of the governing body of a charter school who provides a loan as described in this paragraph shall abstain from voting on, or influencing or attempting to influence another member of the governing body regarding, all matters affecting the loan agreement. The loan agreement shall not disqualify the member from serving on the governing body of the charter school or the person from being an employee of the charter school if the governing body of the charter school, before entering into the loan agreement, declares the existence of and describes the fiscal emergency by adopting a resolution at a public meeting of the governing body. The governing body of the charter school shall~~

1 ~~disclose and approve the loan agreement, including the terms of~~  
2 ~~the loan, during a public meeting. This paragraph shall apply to a~~  
3 ~~member of the governing body or an employee of the charter school~~  
4 ~~who signs a guarantor agreement relative to a line of credit,~~  
5 ~~provided that the funds from the line of credit shall not be accessed~~  
6 ~~until a fiscal emergency is declared and described as required~~  
7 ~~pursuant to this paragraph.~~

8 ~~(3) Notwithstanding Article 4 (commencing with Section 1090)~~  
9 ~~of Chapter 1 of Division 4 of Title 1 of the Government Code, a~~  
10 ~~person who signs a guarantor agreement relative to the lease of~~  
11 ~~real property to be occupied by a charter school is not disqualified,~~  
12 ~~because of that agreement, from also serving as a member of the~~  
13 ~~governing body of the charter school or from being an employee~~  
14 ~~of the charter school. A member of the governing body of a charter~~  
15 ~~school who is a guarantor as described in this paragraph shall~~  
16 ~~abstain from voting on, or influencing or attempting to influence~~  
17 ~~another member of the governing body regarding, all matters~~  
18 ~~affecting the real property lease agreement. The governing body~~  
19 ~~of the charter school shall disclose and approve the real property~~  
20 ~~lease agreement, including the terms of the lease and guaranty,~~  
21 ~~during a public meeting.~~

22 ~~(c) A member of the governing body of a charter school shall~~  
23 ~~abstain from voting on, or influencing or attempting to influence~~  
24 ~~another member of the governing body regarding, personnel~~  
25 ~~matters that uniquely affect a relative of the member but may vote~~  
26 ~~on collective bargaining agreements and personnel matters that~~  
27 ~~affect a class of employees to which the relative belongs. For~~  
28 ~~purposes of this section, "relative" means an adult who is related~~  
29 ~~to the person by blood or affinity within the third degree, as~~  
30 ~~determined by the common law, or an individual in an adoptive~~  
31 ~~relationship within the third degree.~~

32 ~~(d)~~

33 ~~(c) A person who is disqualified by the California Constitution~~  
34 ~~or laws of the state from holding a civil office shall not serve on~~  
35 ~~the governing body of a charter school.~~

36 ~~(e)~~

37 ~~(d) To the extent that the governing body of a charter school~~  
38 ~~engages in activities that are not related to the operation of the~~  
39 ~~charter school, this section does not make those unrelated activities~~  
40 ~~subject to Section 1090 of the Government Code, the Ralph M.~~

1 Brown Act, the Bagley-Keene Open Meeting Act, or the California  
2 Public Records Act. A meeting of the governing body of a charter  
3 school to discuss items related to the operation of the charter school  
4 shall not include discussion of any item regarding an activity of  
5 the governing body that is not related to the operation of the charter  
6 school.

7 ~~(f)~~

8 (e) The governing body of a charter school may meet within  
9 the physical boundaries of the county or counties in which one or  
10 more of the school's facilities are located provided that proper  
11 notices pursuant to the Ralph M. Brown Act or the Bagley-Keene  
12 Open Meeting Act are posted within the physical boundaries of  
13 each of the counties in which any of the school's facilities are  
14 located. A charter school also may meet in a county contiguous to  
15 the county where one or more of the school's facilities are located  
16 if at least 10 percent of the pupils who are enrolled in the school  
17 reside in that contiguous county. A nonclassroom-based charter  
18 school that does not have a facility may meet within the boundaries  
19 of the county in which the greatest number of pupils who are  
20 enrolled in the school reside. This subdivision shall not limit the  
21 authority of the governing body to meet outside these boundaries  
22 to the extent authorized by Section 54954 of the Government Code,  
23 provided that the meeting place is in compliance with Section  
24 54961 of the Government Code.

25 ~~(g) The governing body of a charter school may hold closed~~  
26 ~~sessions to consider a matter regarding pupil discipline as described~~  
27 ~~in Section 48912.~~

28 ~~(h)~~

29 (f) A statement of economic interest that is filed by a designated  
30 person at a charter school after the required deadline pursuant to  
31 the Political Reform Act of 1974 shall not be the sole basis for  
32 revocation of a charter pursuant to Section 47607.

33 ~~(i)~~

34 (g) For purposes of this section, "facility" means a charter school  
35 campus, resource center, meeting space, or satellite facility.

36 ~~(j)~~

37 (h) Notwithstanding any other law, this section shall not apply  
38 to actions taken before the operative date of this section.

39 ~~(k)~~

40 (i) This section shall become operative on July 1, ~~2014.~~ 2015.

1 ~~SEC. 3. Section 1091 of the Government Code is amended to~~  
2 ~~read:~~

3 ~~1091. (a) An officer shall not be deemed to be interested in a~~  
4 ~~contract entered into by a body or board of which the officer is a~~  
5 ~~member within the meaning of this article if the officer has only~~  
6 ~~a remote interest in the contract and if the fact of that interest is~~  
7 ~~disclosed to the body or board of which the officer is a member~~  
8 ~~and noted in its official records, and thereafter the body or board~~  
9 ~~authorizes, approves, or ratifies the contract in good faith by a vote~~  
10 ~~of its membership sufficient for the purpose without counting the~~  
11 ~~vote or votes of the officer or member with the remote interest.~~

12 ~~(b) As used in this article, "remote interest" means any of the~~  
13 ~~following:~~

14 ~~(1) That of an officer or employee of a nonprofit entity exempt~~  
15 ~~from taxation pursuant to Section 501(c)(3) of the Internal Revenue~~  
16 ~~Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except~~  
17 ~~as provided in paragraph (8) of subdivision (a) of Section 1091.5.~~

18 ~~(2) (A) That of an employee or agent of the contracting party,~~  
19 ~~if the contracting party has 10 or more other employees and if the~~  
20 ~~officer was an employee or agent of that contracting party for at~~  
21 ~~least three years before the officer initially accepted his or her~~  
22 ~~office and the officer owns less than 3 percent of the shares of~~  
23 ~~stock of the contracting party; and the employee or agent is not an~~  
24 ~~officer or director of the contracting party and did not directly~~  
25 ~~participate in formulating the bid of the contracting party.~~

26 ~~(B) For purposes of this paragraph, time of employment with~~  
27 ~~the contracting party by the officer shall be counted in computing~~  
28 ~~the three-year period specified in this paragraph even though the~~  
29 ~~contracting party has been converted from one form of business~~  
30 ~~organization to a different form of business organization within~~  
31 ~~three years of the initial taking of office by the officer. Time of~~  
32 ~~employment in that case shall be counted only if, after the transfer~~  
33 ~~or change in organization, the real or ultimate ownership of the~~  
34 ~~contracting party is the same or substantially similar to that which~~  
35 ~~existed before the transfer or change in organization. For purposes~~  
36 ~~of this paragraph, stockholders, bondholders, partners, or other~~  
37 ~~persons holding an interest in the contracting party are regarded~~  
38 ~~as having the "real or ultimate ownership" of the contracting party.~~

39 ~~(3) That of an employee or agent of the contracting party, if all~~  
40 ~~of the following conditions are met:~~

1     (A) The agency of which the person is an officer is a local public  
2     agency located in a county with a population of less than 4,000,000.

3     (B) The contract is competitively bid and is not for personal  
4     services.

5     (C) The employee or agent is not in a primary management  
6     capacity with the contracting party, is not an officer or director of  
7     the contracting party, and holds no ownership interest in the  
8     contracting party.

9     (D) The contracting party has 10 or more other employees.

10    (E) The employee or agent did not directly participate in  
11    formulating the bid of the contracting party.

12    (F) The contracting party is the lowest responsible bidder.

13    (4) That of a parent in the earnings of his or her minor child for  
14    personal services.

15    (5) That of a landlord or tenant of the contracting party.

16    (6) That of an attorney of the contracting party or that of an  
17    owner, officer, employee, or agent of a firm that renders, or has  
18    rendered, service to the contracting party in the capacity of  
19    stockbroker, insurance agent, insurance broker, real estate agent,  
20    or real estate broker, if these individuals have not received and  
21    will not receive remuneration, consideration, or a commission as  
22    a result of the contract and if these individuals have an ownership  
23    interest of 10 percent or more in the law practice or firm, stock  
24    brokerage firm, insurance firm, or real estate firm.

25    (7) That of a member of a nonprofit corporation formed under  
26    the Food and Agricultural Code or a nonprofit corporation formed  
27    under the Corporations Code for the sole purpose of engaging in  
28    the merchandising of agricultural products or the supplying of  
29    water.

30    (8) That of a supplier of goods or services when those goods or  
31    services have been supplied to the contracting party by the officer  
32    for at least five years before his or her election or appointment to  
33    office.

34    (9) That of a person subject to the provisions of Section 1090  
35    in any contract or agreement entered into pursuant to the provisions  
36    of the California Land Conservation Act of 1965 (Chapter 7  
37    (commencing with Section 51200) of Part 1 of Division 1 of Title  
38    5).

39    (10) Except as provided in subdivision (b) of Section 1091.5;  
40    that of a director of, or a person having an ownership interest of,



1 ~~10 percent or more in a bank, bank holding company, or savings~~  
2 ~~and loan association with which a party to the contract has a~~  
3 ~~relationship of borrower or depositor, debtor or creditor.~~

4 ~~(11) That of an engineer, geologist, or architect employed by a~~  
5 ~~consulting engineering or architectural firm. This paragraph applies~~  
6 ~~only to an employee of a consulting firm who does not serve in a~~  
7 ~~primary management capacity, and shall not apply to an officer or~~  
8 ~~director of a consulting firm.~~

9 ~~(12) That of an elected officer otherwise subject to Section 1090;~~  
10 ~~in any housing assistance payment contract entered into pursuant~~  
11 ~~to Section 8 of the United States Housing Act of 1937 (42 U.S.C.~~  
12 ~~Sec. 1437f) as amended, provided that the housing assistance~~  
13 ~~payment contract was in existence before Section 1090 became~~  
14 ~~applicable to the officer and will be renewed or extended only as~~  
15 ~~to the existing tenant, or, in a jurisdiction in which the rental~~  
16 ~~vacaney rate is less than 5 percent, as to new tenants in a unit~~  
17 ~~previously under a Section 8 contract. This section applies to any~~  
18 ~~person who became a public official on or after November 1, 1986.~~

19 ~~(13) That of a person receiving salary, per diem, or~~  
20 ~~reimbursement for expenses from a government entity.~~

21 ~~(14) That of a person owning less than 3 percent of the shares~~  
22 ~~of a contracting party that is a for-profit corporation, provided that~~  
23 ~~the ownership of the shares derived from the person's employment~~  
24 ~~with that corporation.~~

25 ~~(15) That of a party to litigation involving the body or board of~~  
26 ~~which the officer is a member in connection with an agreement in~~  
27 ~~which all of the following apply:~~

28 ~~(A) The agreement is entered into as part of a settlement of~~  
29 ~~litigation in which the body or board is represented by legal~~  
30 ~~counsel.~~

31 ~~(B) After a review of the merits of the agreement and other~~  
32 ~~relevant facts and circumstances, a court of competent jurisdiction~~  
33 ~~finds that the agreement serves the public interest.~~

34 ~~(C) The interested member has recused himself or herself from~~  
35 ~~all participation, direct or indirect, in the making of the agreement~~  
36 ~~on behalf of the body or board.~~

37 ~~(16) That of a person who is an officer or employee of an~~  
38 ~~investor-owned utility that is regulated by the Public Utilities~~  
39 ~~Commission with respect to a contract between the investor-owned~~  
40 ~~utility and a state, county, district, judicial district, or city body or~~

1 board of which the person is a member, if the contract requires the  
2 investor-owned utility to provide energy efficiency rebates or other  
3 type of program to encourage energy efficiency that benefits the  
4 public when all of the following apply:

5 (A) The contract is funded by utility consumers pursuant to  
6 regulations of the Public Utilities Commission.

7 (B) The contract provides no individual benefit to the person  
8 that is not also provided to the public, and the investor-owned  
9 utility receives no direct financial profit from the contract.

10 (C) The person has recused himself or herself from all  
11 participation in making the contract on behalf of the state, county,  
12 district, judicial district, or city body or board of which he or she  
13 is a member.

14 (D) The contract implements a program authorized by the Public  
15 Utilities Commission.

16 (17) That of an employee, or member of the governing body,  
17 of a charter school operating pursuant to Part 26.8 (commencing  
18 with Section 47600) of Division 4 of Title 2 of the Education Code  
19 in a loan agreement with the charter school if the conditions in  
20 paragraph (2) of subdivision (b) of Section 47604.1 of the  
21 Education Code are met, or in a guarantor agreement relative to  
22 the lease of real property to be occupied by the charter school if  
23 the conditions in paragraph (3) of subdivision (b) of Section  
24 47604.1 of the Education Code are met.

25 (e) This section is not applicable to any officer interested in a  
26 contract who influences or attempts to influence another member  
27 of the body or board of which he or she is a member to enter into  
28 the contract.

29 (d) The willful failure of an officer to disclose the fact of his or  
30 her interest in a contract pursuant to this section is punishable as  
31 provided in Section 1097. That violation does not void the contract  
32 unless the contracting party had knowledge of the fact of the remote  
33 interest of the officer at the time the contract was executed.